

REMARKS

By the foregoing amendments claims 45 and 52 have been cancelled and claims 43 and 48 have been amended. Thus, claims 43, 44 and 46-51 remain in the application.

Claims 45 and 52 were objected to in the Office Action because of informalities as referred to in paragraph number 3 on page 2 of the Office Action. Claims 45 and 52 have been cancelled by the above amendments thereby rendering the objection to the claims moot. However, the limitations of the cancelled claims included in claim 43 as amended include appropriate changes to the claim limitations to correct the noted informalities in the claims.

Claims 43-52 were rejected in the Office Action under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-23 of U.S. Patent No. 7,374,578 as stated in paragraph number 5 on page 3 of the Office Action.

Claims 43-52 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over pending claims in each of the five co-pending applications referred to in paragraph number 6 on page 3 of the Office Action.

This rejection and provisional rejection of claims 43-52 under the judicially created doctrine of obviousness-type double patenting are hereby traversed in view of the above amendments to the claims which clearly recite that the resilient leg portion of the lower extremity prosthesis includes a plurality of elongated, upwardly extending, substantially vertically oriented resilient members which are spaced apart in the sagittal plane intermediate there upper and lower ends and which are anterior facing convexly curved at their lower ends to form an ankle area of their prosthesis and which extend

upwardly above the ankle area to a substantially vertically oriented upstanding upper end of the leg portion, at least one of said plurality of resilient members is wider in the frontal plane than thick in the sagittal plane, the resilient leg portion storing energy during force loading of the prosthesis and returning energy during force unloading to increase kinetic power generated for propulsive force by the prosthesis. The cited claims in commonly owned U.S. Patent No. 7,374,578 and the pending claims in the referenced commonly owned co-pending application numbers do not render obvious the improved lower extremity prosthesis of the present invention as recited in the claims as amended U.S. Patent No. 7,374,578 and do not claim a resilient leg portion having a plurality of elongated upwardly extending, substantially vertically oriented resilient members as referred to in claim 43 as amended. Co-pending application no. 11/643,676 referred to in the provisional rejection has been abandoned. The pending claims in the remaining co-pending applications do not disclose or suggest a resilient leg portion including a plurality of elongated upwardly extending substantially vertically oriented resilient members as recited in claim 43 as amended. The amended claims are believed to patentably define over the claims in the co-pending applications referred to in paragraph number 6 on page 3 of the Office Action.

The Examiner's attention is also directed to commonly owned U.S. Application No. 12/886,756 which is a continuation of the present application.

Claim 48 is rejected in the Office Action under 35 U.S.C. § 112, second paragraph, as being indefinite as "the coupling means" lacks antecedent basis. Responsive to this rejection, by the above amendments claim 48 has been amended to depend from claim 47 such that there is proper antecedent

basis for “the coupling means” referred to in claim 48. In view of this change, reconsideration and withdrawal of the rejection of claim 48 under 35 U.S.C. § 112, second paragraph, is requested.

Claims 43, 44 and 46-51 are rejected in the Office Action under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over the patent to Carter, U.S. 2,453,969 as stated on pages 4-6 of the Office Action.

Claims 43-52 are rejected in the Office Action under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Gebrauchsmusterschrift DE 299 20 434 U 1 to Goemed Orthopaedie Service as stated on pages 6-8 of the Office Action.

Claims 43, 44, and 46-51 are rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Celebi, U.S. 6,402,790, as stated on pages 8-10 of the Office Action.

These rejections are hereby traversed and reconsideration thereof is respectfully requested in view of the above amendments to the claims and the remarks set forth below. The improved lower extremity prosthesis of the present invention includes a resilient leg portion having a plurality of elongated, upwardly extending, substantially vertically oriented resilient members which are spaced apart in the sagittal plane intermediate their upper and lower ends. In contrast, the artificial limb disclosed by Carter employs a plurality of resilient members which are spaced apart in the frontal plane, not in the sagittal plane. The resilient leg portion of the present invention is further distinguished from the artificial limb of Carter in that at least one of the plurality of resilient members of the resilient leg portion is wider in the frontal

plane than thick in the sagittal plane. Support for this limitation is present in the application specification, see for example page 16, lines 8-9 of the Substitute Specification. In contrast, the resilient members in Carter are round coiled springs, 6/5/18 in Figures 1-3. In view of these basic differences, it is respectfully submitted that the improved prosthesis of the application claims is not anticipated, 35 U.S.C. § 102, or rendered obvious, 35 U.S.C. §103, in view of Carter.

Celebi discloses an angular adjustable reversible prosthetic device. The members 81 in Celebi are not spaced apart in the sagittal plane intermediate their upper and lower ends as in the resilient leg portion of the lower extremity prosthesis of the present invention. Celebi also does not disclose a resilient leg portion wherein at least one of the plurality of resilient members is wider in the frontal plane than thick in the sagittal plane. Celebi does not anticipate 35 U.S.C. § 102, or render obvious, 35 U.S.C. § 103, the lower extremity prosthesis of the amended claims.

Likewise, the Gebrauchsmusterschrift DE 299 20 434 U 1 to Goemed Orthopaedie Service GMBH does not teach or suggest the present invention. The reference discloses a prosthetic foot for an artificial leg. The foot has a rear e-shaped spiral spring joined to the bottom end of a connector as shown in the application drawings. An English translation in part of the reference is attached as Exhibit 1 to facilitate understanding of the reference. As noted therein, the claimed advantage of the prosthetic foot of the reference is that the foot is simpler and less expensive to produce than a prior art foot having a rear c-shaped spring associated with a pneumatic cylinder and air pump, while providing good movement properties and allowing a certain rotation of

the foot relative to the lower leg. The e-shaped spiral spring 5 of the reference forms an ankle area which under load during gait moves essentially vertically. The reference does not teach or suggest the use of a resilient leg portion including a plurality of elongated, upwardly extending, substantially vertically oriented resilient members whose lower ends form an ankle area of the prosthesis and which extend upwardly above the ankle area to a substantially vertically oriented upstanding upper end of the leg portion for storing energy during force loading of the prosthesis and returning energy during force unloading to increase kinetic power generated for propulsive force by the prosthesis as recited in the claims as amended. The upper end 8 of the spiral spring 5 in Goemed extends horizontally at or below the ankle area of the prosthesis. The structure in the reference is not capable of providing the improved dynamic response capabilities of the high performance prosthetic foot of the present invention. The claims as amended are not anticipated, 35 U.S.C. § 102, or rendered obvious, 35 U.S.C. § 103, by Goemed.

In view of the above amendments and remarks, reconsideration and allowance of the amended claims is requested.


A Petition for Extension of Time is filed herewith to permit the filing of this Amendment After Final Rejection within the three month extension of time period.

A Request for Continued Examination is filed herewith to require consideration of the amended claims.

Please charge any shortage in the fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 01-

2135 (Case No. 183.39735AX9) and please credit any excess fees to such deposit account.

Respectfully submitted,

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